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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/730,874	12/09/2003	Frank Check	108-028USANA0

Thomas J. Perkowski, Esq., P.C.
Soundview Plaza
1266 East Main Street
Stamford, CT 06902

CONFIRMATION NO. 4770

FORMALITIES LETTER



OC000000013869786

Date Mailed: 09/22/2004

NOTICE OF OMITTED ITEM(S) IN A NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has been accorded to the above-identified nonprovisional application papers; however, the following item(s) appear to have been omitted from the application:

- Page(s) 3 of the specification (description and claims).

I. Should applicant contend that the above-noted omitted item(s) was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and \$130.00 petition fee (37 CFR 1.17(h))) with evidence of such deposit **must** be filed within **TWO MONTHS** of the date of this Notice. The petition fee will be refunded if it is determined that the item(s) was received by the USPTO.

II. Should applicant desire to supply the omitted item(s) and accept the date that such omitted item(s) was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item(s) (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items), and a petition under 37 CFR 1.182 (with the \$130.00 petition fee (37 CFR 1.17(h))) requesting the later filing date **must** be filed within **TWO MONTHS** of the date of this Notice.

Applicant is advised that generally the filing fee required for an application is the filing fee in effect on the filing date accorded the application and that payment of the requisite basic filing fee on a date later than the filing date of the application requires payment of a surcharge (37 CFR 1.16(e)). To avoid processing delays and payment of a surcharge, applicant should submit any balance due for the requisite filing fee based on the later filing date being requested when submitting the omitted item(s) and the petition (and petition fee) requesting the later filing date.

III. The failure to file a petition (and petition fee) under the above options (I) or (II) within **TWO MONTHS** of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. **THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b).** In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (*i.e.*, the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel incomplete sentences caused by any omitted page(s), and/or amendment of the specification to cancel all references to any omitted drawing(s), relabel the drawing figures to be numbered consecutively (if necessary), and correct the

10/05/2004 CCHAU1 00000010 10730874

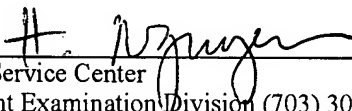
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references in the specification to the drawing figures to correspond with any relabeled drawing figures, is required. A copy of the drawing figures showing the proposed changes in red ink should accompany with any drawing changes. Such amendment and/or correction to the drawing figures, if necessary, should be by way of preliminary amendment submitted prior to the first Office action to avoid delays in the prosecution of the application.

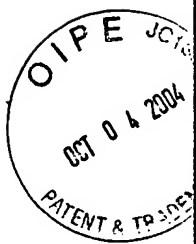
Replies should be mailed to: Mail Stop Missing Parts
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A copy of this notice MUST be returned with the reply.


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Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

IFL ✓



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Applicant : Frank Check
Application Serial No.: 10/730,874
Filing Date: : December 9, 2003
Title: METHOD OF AND SYSTEM FOR DETECTING AND
CORRECTING MODE SWITCHING IN DIFFRACTIVE-
BASED LASER SCANNING SYSTEMS
Examiner : n/a
Group Art Unit : 2828
Attorney Docket No. : 108-028USANA0

Honorable Commissioner of Patents
and Trademarks
Washington, DC 20231

RESPONSE TO NOTICE OF OMITTED ITEMS

Sir:

In response to the Notice of Missing Parts of Application/Filing Date Granted dated March 10, 2004, Applicant submits herewith page 3 of the Substitute Specification and Declaration Under 1.125 for filing in the above-referenced Application, as well as the following remarks:

On December 9, 2003, Applicant submitted the following documents for filing connection with a Continuation Application under 1.53(b):

- Transmittal Letter Accompanying The Filing Of A Continuation Application Under 37 C.F.R. 1.53(b);
- True Copy of USSN 09/816,642 comprising Thirty One (31) pages of Specification; Eight (8) pages of Claims to Invention; One (1) page of Abstract of Disclosure; Twenty Eight (28) sheets of Informal Drawings;
- Declaration Under 37 C.F.R. 1.53(b);
- Preliminary Amendment;
- Substitute Specification, Claims and Abstract;
- Declaration Under 1.125;
- Copy of Declaration of Inventorship/Power of Attorney for parent Application 09/816,642;
- Request for Approval of Proposed Changes to the Drawings;
- Nine (9) sheets of Redmarked Drawings;
- Submission of Formal Drawings;
- Twenty Eight (28) sheets of Formal Drawings;
- Certificate of Express Mailing (No. EL799853346US) under C.F.R. 1.10 dated December 9, 2003; and
- Return Receipt Postcard.

At the time of filing, Applicant submitted a true copy of the entire Specification of prior Application No. 09/816,642 which was on 8 1/2 x 14 paper. At this same time, Applicant submitted a Substitute Specification on 8 1/2 x 11 paper, in order to comply with regulations set forth in 37 C.F.R. 1.52, but inadvertently failed to include page 3 of the Substitute Specification.

On September 24, 2004, Applicant received a Notice Of Omitted Items dated September 22, 2004, which stated that page 3 of the Specification was missing from the filing documents filed on December 9, 2003, and which further stated that Applicant could submit the missing page but the filing date would be changed to the date when the missing page was received by the USPTO.

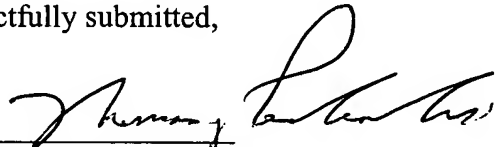
However, since Applicant did submit an entire copy of the Specification in the form of the photocopy of prior Application No. 09/816,642, and the Substitute Specification was not required at the time of filing in order to obtain the filing date, Applicant requests the page 3 of the Substitute Specification be entered herewith, and that the filing date remain unchanged.

Enclosed in payment of the requisite petition fee of \$130.00 under 37 C.F.R. 1.17(h) is Thomas J. Perkowski, Esq., P.C. Check No. 4468 in the same amount. The Commissioner is also hereby authorized to charge any fee deficiencies or overpayments to Deposit Account No. 16-1340. A copy of this document is enclosed herewith.

Please address all correspondence to the undersigned attorney at the following address:

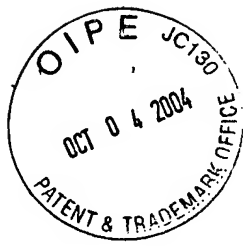
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Respectfully submitted,



Dated: September 28, 2004

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37 C.F.R. 1.8

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Thomas J Perkowski, Esq.
Date: September 28, 2004